IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 8707 OF 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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GUJARAT STATE LAND DEVELOPMENT CORPORATION LTD. - Petitioner(s)

Versus

JIVABHAI SOMABHAI BHOI - Respondent(s)

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Appearance :
Shri H.S. Munshaw for Petitioner(s).
Shri P.H. Pathak for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 24/08/2007

ORAL JUDGMENT

The petitioner, Gujarat State Land Development Corporation

Limited, being aggrieved by the award dated 30th March, 2000 passed by the learned Labour Court, Nadiad in Reference (LCN) No.229 of 1989, is before this Court with a submission that the learned Court below erred in directing reinstatement with 50% back-wages in favour of the respondent-workman.

2. The short facts necessary for disposal of the Writ Application are that the petitioner-Corporation was incorporated in the year 1978, the respondent, who was earlier working in the Agriculture Department of the Government of Gujarat, was continued as a daily wager. According to the respondent, he was orally removed from the services with effect from 1st July, 1983 and as the removal was illegal, he was entitled to be reinstated. The present petitioners appeared before the learned Labour Court and submitted that with effect from 28th June, 1983, the present respondent-workman of his own stopped coming to work, they submitted that as the case is of abandonment of work, the respondent was not entitled to any relief. The learned Court below granted proper opportunity to each of the parties to lead evidence. The workman examined his own self, but, the present petitioner-Employer, while examining its witnesses, also produced in evidence the attendance register/muster rolls of June-1983 and July-1983. After hearing the parties, the learned Court below allowed the reference with a direction of reinstatement with 50% back-wages.

3. Shri H.S. Munshaw, learned Counsel for the petitioner-Employer, submitted that from the attendance register/muster rolls, it clearly appears that the workman had worked upto 27th June, 1983 and thereafter, did not report on duty. According to him, if the respondent had not come to work after 28th June, 1983, no oral directions could be issued to him at any time after 28th June, 1983, or on 1st July, 1983, to be more specific. He submitted that the learned Court below, without any rhyme or reason, simply held that the respondent was orally terminated.

4. Shri P.H. Pathak, learned Counsel for the respondent-workman, however, submitted that the workman was not allowed to work after 1st July 1983 and therefore, the said conduct on the part of the present petitioner was amounting to oral termination. Placing reliance upon a judgement of the Supreme Court in the matter of ***M.C.D. vs. Praveen Kumar Jain & Ors.***, [***1998 (II) L.L.J. 674***], he submitted that in a case like the present, some charge-sheet ought to have been issued and only after holding an inquiry, the workman could be removed from the services.

5. From the records, it would appear that the workman came

to the Court with a submission that he was illegally orally removed with effect from 1st July, 1983. Once the workman came with that case, then, he was required to prove as to who asked him not to come to work and who had issued such instructions relating to retrenchment/removal/termination. The workman simply said that he was orally terminated with effect from 1st July, 1983. That was the total evidence from the side of the workman. The present petitioner-Employer produced the muster rolls for June-1983 and July-1983 before the learned Court below. In the muster rolls for June-1983, the workman is shown to be in attendance upto 27th June, 1983, but, from 28th June, 1983 onwards, he is shown "*Gerhazar*" (absent). In the month of July-1983, for each and every day, the respondent-workman is shown absent. If the case of the respondent is taken to be correct that he was orally terminated, then, there was no reason for the department/employer to continue the name of the present respondent in the muster rolls. If for 31 days, they have marked absence of the respondent, then, it would clearly show that they did not terminate the services on 1st July, 1983 or thereafter.

6. Shri P. H. Pathak, learned Counsel for the respondent, however, submitted that long and continuous absence would amount to misconduct, therefore, an inquiry ought to have been made and in

absence of the inquiry, the workman could not be removed.

7. If present was a case of termination because of the absence of the workman, then, the argument of Shri Pathak certainly could prevail, but, unfortunately, present is not a case of termination on the ground of absence. Present is a case where the respondent came to the Court with a submission that he was orally terminated with effect from 1st July, 1983, but, failed in proving the same and the petitioners could successfully prove that the workman, who was a daily wager, had abandoned the work of his own. In a case where the workman abandons the work, then, the provisions of Section 25-F of the Industrial Disputes Act, 1947 would not apply because one cannot say that abandonment would amount to illegal retrenchment.

8. The learned Court below, in the opinion of this Court, was unjustified in not properly appreciating and interpreting the muster rolls and further erred in recording the perverse finding that the workman was orally removed with effect from 1st July, 1983.

9. The award made by the learned Court below deserves to and is, accordingly, quashed.

10. The petition is allowed. Rule is made absolute. No costs.

[R.S.Garg, J.]

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